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IN THE

Supreme Court of the United States

OCTOBER TERM—1947

No. 766

EDWARD K. BARSKY, et al.,
Petitioners,

v.

UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION C.I.O.; NATIONAL UNION OF MARINE COOKS AND STEWARDS C.I.O.; INTERNATIONAL FISHERMEN & ALLIED WORKERS OF AMERICA C.I.O.; UNITED OFFICE & PROFESSIONAL WORKERS OF AMERICA C.I.O.; AMERICAN COMMUNICATIONS ASSOCIATION C.I.O.; UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA C.I.O.; INTERNATIONAL FUR & LEATHER WORKERS UNION C.I.O.; INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS C.I.O.; UNITED PUBLIC WORKERS OF AMERICA C.I.O.; FOOD, TOBACCO, AGRICULTURAL & ALLIED WORKERS OF AMERICA C.I.O.; UNITED FARM EQUIPMENT & METAL WORKERS OF AMERICA C.I.O.; UNITED FURNITURE WORKERS OF AMERICA C.I.O.

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The undersigned trade unions, having an aggregate membership of 1,196,500, respectfully move for leave to file a brief *amici curiae* in support of the petition for certiorari herein. The written consent of petitioners' counsel has already been mailed to the Clerk for filing. Respondent's counsel has been requested to consent but no reply has yet been received.

The undersigned believe that the issues presented by such petition are fundamental to their own constitutional right to function effectively as trade unions; that if the constitutional basis here asserted for the congressional power upon which these convictions are founded be a valid one, the operations of all trade unions, including the undersigned, will be profoundly affected. This belief is pointedly justified by the declared intention of the House Committee

on Un-American Activities to conduct inquiries into ideas and opinions existing in the trade union movement, among the foreign born, the Negro people, and other specified sections of the population. New York Herald-Tribune, January 8, 1948.

Upon this declaration and the entire record of this Committee as set out in petitioner's brief and that of the *amici* already filed, the undersigned perceive such an interest in a judicial determination upon the validity of this Committee's establishment, operation and asserted authority as requires the filing of a brief *amici curiae*.

Leave to do so is, therefore, respectfully requested.

BRIEF AMICI CURIAE

ARGUMENT

I

The statute creating the House Committee on Un-American activities authorizes abridgement of the rights of speech and assembly by means of "investigation," "exposure," etc., and is therefore void under the First Amendment.

Congress' power to investigate, like any other, is limited by the Constitution and subject to judicial review. *Kilbourn* v. *Thompson*, 103 U. S. 168, 181 (1881); *U. S.* v. *Lee*, 106 U. S. 196, 220 (1882); *McGrain* v. *Daugherty*, 273 U. S. 135, 176 (1926); *Jurney* v. *McCracken*, 294 U. S. 125, 148 (1934).

Here, as we later show (Point II, *infra*) the unlimited authority to investigate "propaganda" is an unconstitutional burden upon the rights guaranteed by the First

Amendment. As between those rights and Congress' power to investigate, the former are paramount and must prevail. The Supreme Court has repeatedly so decided with reference to other powers of Government. *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Schneider* v. *Irvington*, 308 U. S. 147 (1939); *A. F. L.* v. *Swing*, 312 U. S. 321 (1941); *Thomas* v. *Collins*, 323 U. S. 516 (1945). The power of Congress to investigate can be no exception if the primacy thus accorded the fundamental guarantees of the First Amendment is to continue. Nor are those guarantees limited to the naked right to think and speak. Their protection extends as well to political association and all the practices normally entailed in translating political ideas into action. Cf. *De Jonge* v. *Oregon*, 299 U. S. 353 (1937); *Schneiderman* v. *United States*, 320 U. S. 118 (1943); *Baumgartner* v. *United States*, 322 U. S. 665 (1944); *Bridges* v. *Wixon*, 326 U. S. 135 (1945).

The constitutional invalidity of this Committee's power to investigate may not be avoided by the Government's claim that it was conferred in aid of the legislative process or, in other words, because some constitutional enactment *may* conceivably eventuate from this Committee that, therefore, this entire grant of power, in all its sweep and vagueness, is thereby validated and put beyond the reach of the Constitution and Bill of Rights. Such a claim, should it receive judicial sanction, would become a most dangerous encroachment upon the fundamental guarantees of the First Amendment. Its effect would be to permit Congress to violate the Constitution in the very process of legislating under it. It would impose upon this defendant the intolerable burden of arguing the invalidity, not only of *this* resolution, but of *any* conceivable resolution which purported to authorize an investigation into the area of speech and assembly. It would introduce into our constitutional law the startling principle that an unconstitutional means may validly be used if only the end in view *might* be constitutional. Cf. *Jones* v. *Securities and Exchange Com-*

mission, 298 U. S. 1, 25-26 (1935); *Colonial Sugar Refining Co.* v. *Attorney General* (High Court of Australia), 15 C. L. R. 182, 195 (1912), extended on appeal by Privy Council in L. R. (1914) App. Cas. 231, 257 (1914). Such is not our understanding of the Bill of Rights and we earnestly hope that this Court will not make it theirs.

The danger thus inherent in the Government's position gives particular point to the prophetic warning sounded by this Court sixty-six years ago when, as now, a roving power of investigation by the House of Representatives was asserted as a necessary adjunct of its broad legislative power under the Constitution. The Court then took occasion to warn: "It is all the more necessary that the exercise of power by this body when acting separately from and independently of all other depositories of power, should be watched with vigilance, and when called in question before any other tribunal having the right to pass upon it, that it should receive the most careful scrutiny." *Kilbourn* v. *Thompson,* 103 U. S. at p. 192. Compare, Wigmore, *Evidence* (1940), 3rd Ed., Vol. VIII, Sec. 2195, p. 80.

Moreover, the First Amendment decisions of this Court in more recent years have consistently expounded a doctrine of civil rights which likewise cannot be reconciled with the Government's reliance here upon any supposed legislative purpose of this Committee. Thus, statutes which impinge upon constitutionally protected speech and assembly have been successively struck down without regard to ingenious speculation upon whether they might somehow lend themselves to a permitted purpose or application. Compare, *Thornhill* v. *Alabama,* 310 U. S. 88, 97-98 (1940); *Carlson* v. *California,* 310 U. S. 106, 111-112 (1940); *Lovell* v. *Griffin,* 303 U. S. 444, 450-451 (1938); *Herndon* v. *Lowry,* 301 U. S. 242, 263-264 (1937).

The statute here falls squarely within the condemnation of these cases. By its terms, the Committee may investigate "propaganda" of all kinds, foreign and domestic, its "character", "extent", "objects", and "diffusion" without any objective standard or restriction whatever. "Propa-

ganda" is "* * * a plan for publication of a doctrine or system of principles". *Leubuscher* v. *Commissioner* (C. C. A. 2, 1932), 54 F. (2d) 998, 1000; cf. *Funk & Wagnall's New International Dictionary* (1935), p. 1985. Its connotations fall entirely within the realm of opinion, thought, speech, publication, advocacy, the very things which the First Amendment declares to be immune from all Government restriction, regulation, or encroachment. Thus, this power of inquiry "* * * sweeps within its ambit * * * activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press". *Thornhill* v. *Alabama*, 310 U. S. at pp. 97-98.

To us it is too clear for argument that such an inquiry *must* abridge political thought, speech and assembly. To execute an authority defined in such terms, the Committee is bound to probe into the ideas and opinions of those whom it singles out for investigation. Thus, its entire "stock and trade" must occupy an area expressly proscribed by the Bill of Rights. This is apparent not only from the text of the Resolution itself, but will be especially so from the record of the Committee's consistent operation under it. Point II, *infra*.

Compulsory accountability to any Government body for one's political beliefs or the exercise of the right to act in furtherance of them is so abhorrent to the principles of our constitutional system that the mere provision for any such thing is enough, without more, to violate the First Amendment. "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field, every person must be his own watchman for truth, because the forefathers did not trust any government to separate the truth from the false for us". Jackson, J., in *Thomas* v. *Collins*, 323 U. S. 516, 545 (1945).

But the burdens here imposed upon constitutionally protected speech and assembly by the publicity, harassment, expense, etc., of the public (and private) "hearings" to

which this Committee may hail any person or group deemed or suspected by it to be "un-American" or "subversive", serve to confirm the inherent invalidity of this statute and will *independently* sustain its violation of the First Amendment. "The existence of * * * a statute, which readily lends itself to harsh and discriminatory enforcement * * * against particular groups deemed to merit * * * displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded within its purview". *Thornhill* v. *Alabama,* 310 U. S. at pp. 97-98.

We treat this more fully in the point that follows.

II

A decade of experience under the investigative power granted by this statute and the identical power previously granted by House resolution to this Committee's predecessors confirm the view that it, and its entire course of practice, are and have been a continuing violation of the First Amendment.

The usual presumption of constitutionality attaching to acts of Congress does not apply when the guarantees of the First Amendment are involved. *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152-153, Note 4 (1938); *Thornhill* v. *Alabama,* 310 U. S. 88, 95-96 (1940), citing *Schneider* v. *State,* 308 U. S. 147, 161, 162; *Thomas* v. *Collins,* 322 U. S. 516, 529-530 (1945); cf. 40 Col. L. Rev. 531; 51 Yale L. J. 798, 802. "It is imperative that when the exercise of these rights is claimed to be abridged, the Courts 'should weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations". *Thornhill* v. *Alabama, supra,* p. 96.

We can think of no better test by which to "weigh the circumstances" and "appraise the substantiality of the reasons" for this statute than the pragmatic one of experi-

ence derived from its actual application and enforcement. Compare *Thornhill* v. *Alabama, supra,* p. 98; *Yick Wo* v. *Hopkins,* 118 U. S. 356, 373-374 (1886). Applying that test, it becomes apparent that the manner in which this Committee has consistently exercised its power, the things done and said and attempted in pursuance of it, the purposes which it was avowedly invoked to serve—all combine to show the inherent want of this Committee's constitutional authority and confirm our position on the face of the statute that its purpose and effect are, and always have been, to proscribe and penalize political speech and assembly in violation of the First Amendment.

It would unduly protract this brief to refer to all the abuses practiced by this Committee* which point to and, in many instances, establish its constitutional invalidity.

Many of these the Trial Court excluded, erroneously, we believe, in view of their undoubted relevance under the constitutional doctrine of the *Thornhill* and other cases, *supra.* We refer specifically to such offers of proof as the Committee's harassment of its own members' political opponents and others, including these petitioners (R. 329-331, 336-337, 338, 461, 463, 464-465, 470, 498, 579); of its flagrantly undemocratic procedures (R. 479); of its public condemnation of witnesses without affording them an opportunity to be heard (R. 483, 580); of its consistent abuse of witnesses whose political views it disapproved (R. 392-407, 420, 476, 471-473, 479).

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* The present Committee is the successor, without change in character or authority, of the Dies and Wood-Rankin Committees of prior Congresses. The identity in function, power and avowed purpose is so complete that the entire succession may be regarded, for all but purely formal purposes, as one continuing Committee. For the prior resolutions, see H. Res. 282, 75th Cong. 3rd Sess.; 83 Cong. Rec. 7568, 7586 (1938); H. Res. 26, 76th Cong. 1st Sess.; 84 Cong. Rec. 1098, 1128 (1939); H. Res. 321, 76th Cong. 3rd Sess.; 86 Cong. Rec. 572, 605 (1940); H. Res. 90, 77th Cong. 1st Sess., 87 Cong. Rec. 886, 899 (1941); H. Res. 420, 77th Cong. 2nd Sess., 88 Cong. Rec. 2282, 2297 (1942); H. Res. 65, 78th Cong. 1st Sess., 89 Cong. Rec. 795, 810 (1943); H. Res. 5, 79th Cong. 1st Sess., 91 Cong. Rec. 10, 15 (1945).

All these matters should have been received under a rule of proper latitude. They go directly to a constitutional issue that is fundamental to a determination of this case. Their exclusion was reversible error.

But this Committee's violations of constitutional right go far beyond the particular instances offered in the Court below. Evidence of many other abuses, some even more flagrant, is to be found in the Congressional Record and other sources within the judicial notice of this Court. We make brief reference to some of the more outstanding, which, we believe, will be enough for our purpose.

First, there is the Committee's repeated avowal that its major end and purpose are not legislation but "exposure" of individuals and groups whose views it deems incompatible with its own undefined conception of Americanism. It openly admits this purpose in a more recent report. Thus, "The House Committee on Un-American Activities is empowered to explore and expose activities by un-American individuals and organizations which, while sometimes being legal, are nonetheless inimical to our American concepts and our American future * * *" H. R. Rep. No. 2742, 79th Cong., 2nd Sess. 16 (1947). See also, H. R. Rep. No. 2, 76th Cong., 1st Sess., 13 (1939); H. R. Rep. No. 1, 77th Cong., 1st Sess., 24 (1941).

From the Committee's constant devotion of its energies to this arrogated function of "exposure" some of its most flagrant constitutional abuses have arisen. Hence, these open and repeated avowals lend particular emphasis to our entire constitutional argument under this head. For, in our view, "exposure" is wholly outside the constitutional province of a Congressional Committee. The major function of Congress is to legislate. All else it does must, unless otherwise authorized by the Constitution itself, be in aid of valid legislation. No other conclusion is possible under our constitutional system of separate powers. It was explicitly so held in *Kilbourn* v. *Thompson*, 103 U. S. 168 (1881), where this Court denied effect to a House Committee's process precisely because its investigation

went beyond the legislative province.* That decision has since been repeatedly affirmed and applied for this same principle and is unquestionably the law today. Compare, *United States* v. *Lee,* 106 U. S. 196, 220 (1882); *McGrain* v. *Daugherty,* 273 U. S. 135, 176 (1926); *Jurney* v. *MacCracken,* 294 U. S. 125, 134 (1934); *Jones* v. *S. E. C.,* 298 U. S. 1, 25-26 (1935). Cf. *United States* v. *Ballard,* 328 U. S. 78 (1944).

But the importance of this "exposure" purpose lies not only in its overreaching *any* Congressional Committee's permitted scope. What is even more important is that *this* Committee's almost exclusive preoccupation with "exposure" independently attests the inherent invalidity of its entire power to investigate. For such preoccupation, considered with the virtual absence of any valid legislation emanating from the Committee,† are a tell-tale measure of the frustration which the First Amendment imposes upon the possibility of valid legislation within the framework of its powers. In a word, it has been remitted to this invalid function of "exposure" precisely because it could validly do nothing else.

All this becomes even clearer from the particulars of this "exposure" practice now accumulated over the decade of the Committee's activity. These establish an unvarying pattern of constant preoccupation with ideas and opinions deemed suspect or unsuitable by Committee members and unremitting use of "exposure" as a threat whereby to penalize and control such political thought and utterance.

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* It is most significant, in this connection, that in proclaiming this "exposure" function, the Committee has expressly referred to itself as the "grand jury" of America. 91 Cong. Rec. 275.

† Only two measures have ever been associated with the Committee's decade of hearings, reports, etc. One was held unconstitutional as a bill of attainder (*U. S.* v. *Lovett,* 328 U. S. 303, 308 [1946]); the other (54 Stat. 1201, 18 U. S. C. Secs. 14-17) was merely introduced by a Committee member. Since attaining status as a standing Committee no legislation whatever has come from it. For comment on its notable lack of *legislative* performance, see 47 Col. Law Rev., 427 N. 109.

Several episodes to this effect have already been cited from this record. But they are by no means all. There are others in which the Committee showed its hand in crudest fashion. For example, it has denounced as "un-American" a whole series of political ideas as such—among them several measures of moderate social reform. See, H. R. Rep. 2748, 77-2, Jan. 2, 1945, pp. 3, 10, 13, 14, 35, 49; H. R. Rep. 592, June 16, 1947, p. 12; H. R. Rep. 2233, June 7, 1946, p. 35). There is also the Committee's letter of October 20, 1945, sent by its chief counsel to several broadcasting companies which calls attention to "* * * certain so-called news commentators who engage in expressions of opinion * * * to such an extent as to overshadow the news and emphasize the elements of propaganda", and then concludes, "I would appreciate an expression of opinion from you as to what should be done and what can be done. I hope that the stations will make it unnecessary for the Committee to recommend the passage of remedial legislation". H. R. Rep. 2223, 79-2, June 7, 1946, p. 12. A more brazen violation of the First Amendment, i. e., the attempted control of news broadcasting in a particular direction, can scarcely be imagined. In the same category is another Committee letter demanding the list of officers of an organization called "Veterans Against Discrimination" which offers the following piece of political insight by its chief counsel: "I note that you refer to democracy several times. I wonder if you are sufficiently familiar with the history of the United States to be aware that this country was not organized as a democracy * * *" (Cong. Rec., January 29, 1946, p. A740).*

In this same connection we point also to the ruthlessness with which the Committee has pursued its "exposure" purpose and the resultant degree and quality of oppression

* This is a notorious fascist "theory" of American government. Thus, William Dudley Pelley testified before this Committee: "I do not believe in this much touted democracy when our country is a republic * * * democracy means rule of the mob * * * it was not used in our original set-up by the founding fathers." Hearings, 76-3 1940, Vol. 12, p. 7283.

not hitherto associated with the processes of free Government. The Committee Chairman in 1942 boasted in the House that a certain prominent writer had been forced to resign from the Government because he (Dies) had branded him a Communist and then added, "I believe that the American people will now welcome numerous resignations or dismissals from the staff of the Board of Economic Warfare". Cong. Rec., March 28, 1942, p. 3205. In undoubted pursuance of its "exposure" purpose, the Committee has compiled its blacklist of a million persons or more, as its own report admits. H. R. Rep. 2748, 77-2. It is a matter of record that many persons have been deprived of their livelihoods, without hearing, following these *ex parte* "exposures" and other irresponsible "punitive" publicity by this Committee. Cong. Rec., March 29, 1940, p. 3695; Oct. 26, 1939, p. 815A. Two bills of attainder, added to appropriation measures to force off the Government payroll persons whose views this Committee disapproved are traceable directly to this "exposure" practice, as indeed this Court pointedly noticed as to one of them in striking it down as unconstitutional. *U. S.* v. *Lovett,* 328 U. S. 303, 308, 309, 312; cf. Cong. Rec., Feb. 8, 1943, pp. 704, 705, 707, 708; Feb. 5, 1943, pp. 654, 656.

But these "exposure" techniques have not been confined to the Committee's own denunciation and intimidation of political opinion which it disapproves. Sometimes means more subtle were made to serve the same end. Not infrequently for example, it has planned its "hearings" as a forum from which "witnesses" known to support its members' own views have been generously allotted time to denounce ideas and their advocates disapproved by the Committee. Note, for example, the following colloquy between the present Committee Chairman and the notorious Gerald L. K. Smith which we quote without comment (Hearing, 79-2, Jan. 30, 1946, p. 20):

> "Mr. Thomas: Would you say that the German-American bund was a fascist organization?
>
> Mr. Smith: I would say that it is ideologically Fascist. I would not say that it was effectively Fascist.

> The only effective Fascism that has really imperiled our people in their daily life in this country has been the administration of the New Deal bureaucracy.
>
> Mr. Thomas: Now, you have referred to the New Deal before. Would you say it was more Fascist or more Communist?
>
> Mr. Smith: I would say that they employ the ideology of the Communists and the techniques of the Fascists. I think Mr. Roosevelt was very much an imitator of Mr. Hitler.
>
> Mr. Thomas: Well, Mr. Roosevelt has passed away now.
>
> Mr. Smith: Yes, but he personified the New Deal.
>
> Mr. Thomas: Let him rest in peace. Would you say Huey Long was a Fascist?
>
> Mr. Smith: The answer is positively 'no.'"

At the conclusion of this interchange the Chairman was moved to say: "The chair expresses the appreciation of the Committee for your testimony, Mr. Smith." Hearings *supra*, p. 60. There being no dissent, he presumably spoke for the entire Committee. This treatment—typical throughout—of political-racist and fascist groups, is itself proof positive of the Committee's dominant purpose to proscribe political opinion and advocacy. It is for this reason only that we refer to it. It illustrates a particularly reprehensible technique by which the Committee accomplishes its encroachment upon the protected area of political ideas, that is, the utilization of its hearings by one segment of opinion to attack another of which Committee members disapprove.

The Committee's preoccupation with the area of political ideas with the view to stigmatizing those which its members disapprove is well illustrated by its attitude and treatment toward certain individuals and groups not coming within its particular condemnation. Thus, when a professional anti-Semite—one George Detherage—proclaiming his views at a Committee hearing, refused to answer questions about the membership and other data of his organization, no contempt citation was voted. Hearings, 76-1, Vol. 5, 1939,

p. 3455 ff. On another occasion the Committee Chairman explained the failure to "expose" such characters as Father Coughlin and Rev. Winrod with the statement that the Committee would then have been labeled anti-religious. Cong. Rec., March 11, 1942, p. 1926. Into this same category would come also its failure to inquire into such organizations as the Ku Klux Klan, the Christian Front, etc. Cong. Rec., October 24, 1945, pp. 10181-10182.

Perhaps the most abhorrent manifestation of this outlook upon its function has been the Committee's own incitement of racial and religious prejudice. It would be bad enough if this were merely the consequence of its coddling and indulgence towards fascist and anti-Semitic groups which have never failed to repay the Committee with their unstinted praise and support. See Cong. Rec., Feb. 10, 1943, p. 798. But, unhappilly, this direction of its activities is far more positively indicated. When, for example, a noted professor of Columbia University was being examined at a "closed hearing" of the Committee his interrogator, a Committee investigator, in the presence of its chief counsel, and without remonstrance from the latter, said to the professor: "You should tell your Jewish friends that the Jews in Germany stuck their necks out too far and Hitler took care of them and that the same thing will happen here unless they watch their step." 92 Cong. Rec. A872, 1444 (Feb. 19, 1946). This episode was put in affidavit form and the above quotation inserted in the Congressional Record by Congressman Sabath as part of his letter to the Committee Chairman calling for an investigation of the Committee's own staff. See 92 Cong. Rec. 1444, A872. In this connection we mention, too, the anti-Semitic harangues of the ranking minority member of the Committee on the floor of the House which, on one occasion, reached such proportions that the Speaker was obliged to intervene (Cong. Rec., Oct. 24, 1945, pp. 10187-10189); and the not unrelated manifestation, at the same session, of the Committee's studied disregard toward all pleas by Congressmen and others to inquire into the Ku Klux Klan and other specified fascist and anti-Semitic organizations (Cong. Rec., Oct. 24, 1945, pp. 10181-10182).

With this kind of outlook upon its powers and purposes illustrated by the above conduct of its members and staff, it is perhaps natural that its hearing procedures and other methods should be wholly devoid of the fairness, consideration and impartiality which are normally followed in the relations of the Government with its citizens. Indeed, there is not even any pretense of adherence to these standards. "We can say anything we like about people and they have no recourse" (Rep. Dempsey, Cong. Rec., Jan. 23, 1940, p. 587). Its methods obliged Rep. Voorhis to resign his Committee membership in a blistering denunciation (Cong. Rec., June 24, 1942, p. 2451). Other Congressmen have from time to time shared his views with equal vigor (Cong. Rec., Feb. 9, 1939, p. 1108; Feb. 3, 1939, p. 465; Jan. 23, 1940, p. 580). Nor is it remarkable, in these circumstances, that the Committee's assumed scope and manner of operation have already incurred sharp judicial criticism as well. See *U. S.* v. *Lovett,* 328 U. S. 303-313 (1946); *Reeve* v. *Howe,* E. C. Pa. (1940), 32 Fed. Supp. 619 (Unlawful Search and Seizure by Committee Agents); *Ex parte Frankfeld,* D. C. Dist. of Col. (1940), 32 Fed. Supp. 915 (Unlawful Commencement of Criminal Prosecution by Committee Agents); *U. S.* v. *Blumberg,* D. C. Dist. of Col. (1940), Crim. No. 65,800 (Unlawful Search and Seizure by Committee Agents); *U. S.* v. *Dolson,* D. C. Dist. of Col. (1946), Criminal No. 65801 (Unlawful Arrests by Committee Agents).

This long procession of constitutional and other abuse may not be dismissed as merely so many "excesses" or "aberrations" and thus subtracted from the Committee's total record and significance. On the contrary, they are an integral part of any real constitutional analysis of its powers because they demonstrate what such a grant of power to *any* organ of Government must become—i. e., a continuing encroachment upon political thought, speech and assembly, a forced imposition of prescribed orthodoxy upon dissidence, a vehicle for compelling conformity by all to the political views of particular officials on pain of "exposure" and all its consequences.

This Court is the only remaining breakwater against this rising tide of political intolerance and hysteria. There is now no other constitutional protection against these assaults upon civil liberty which, if unchecked, will give the sanction of law to political conformity and make the Bill of Rights a dead letter. "Under our constitutional system, Courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are * * * non-conforming victims of prejudice and public excitement". *Chambers* v. *Florida,* 309 U. S. 227, 241 (1940).

In our considered view those words express the impelling reason for this prosecution. It is a reason that puts this Court under a special responsibility to apply the Bill of Rights here with the same vigor that it would if the impositions of this Committee were being resisted by those to whom no unpopular views were ascribed. "No higher duty, no more solemn responsibility, rests upon this Court than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—*of whatever race, creed or persuasion.*" *Chambers* v. *Florida, supra,* at p. 241.

One concluding word. These current threats to the integrity and effectiveness of the Bill of Rights have not gone unchallenged in conservative circles of opinion.

Twenty-two faculty members of the Yale Law School have addressed a letter to the President of the United States calling for immediate abolition of the House Committee on Un-American Activities and a drastic revision of the executive "loyalty" policy "* * * so as to bring it into conformity with both the spirit and the letter of the Constitution." Their reasons are stated in terms which epitomize our position here: "It is, we believe high time that the Executive and Legislative branches of the United States Government forswear belief in witches and, by practicing democracy, set an example to those parts of the world which we hope to have embrace its principles."

CONCLUSION

We join in the petition for certiorari and earnestly entreat this Court to vindicate the spirit and the letter of our Bill of Rights by reversing these convictions and directing a dismissal of the indictments.

Respectfully submitted,

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